

September 10, 2010

Mary Nichols
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Chairman Nichols:

The undersigned organizations have been actively engaged in ensuring the successful and equitable implementation of California's Global Warming Solutions Act (AB 32). We have consistently advocated for implementation strategies that will allow California to fulfill the promises in AB 32 to protect and benefit California's communities, environment, public health, and economy. A critical step towards this effort is for the California Air Resources Board (ARB) to ensure that in the consideration of a market-based compliance mechanism under AB 32, and the associated review of its environmental impacts, every opportunity to avoid and reduce negative impacts to the environment is pursued, and every option to maximize benefits for California is considered. An equally critical component of this step is for ARB to ensure that both the public and relevant decision-makers understand the potential environmental consequences of a range of reasonable alternative strategies for achieving the benefits promised by AB 32. While not all of the undersigned organizations necessarily believe that a cap-and-trade program offers the best options for maximizing environmental and economic benefits to California, we do agree that a full and transparent analysis is critical to ensuring that any proposal is consistent with all statutory requirements governing the implementation of AB 32.

Health and Safety Code, Section 38570, states that, with regard to the implementation of AB 32, ***"Prior to the inclusion of any market-based compliance mechanism in the regulations, to the extent feasible and in furtherance of achieving the statewide greenhouse gas emissions limit, the state board shall do all of the following (1) Consider the potential for direct, indirect, and cumulative emission impacts from these mechanisms, including localized impacts in communities that are already adversely impacted by air pollution. (2) Design any market-based compliance mechanism to prevent any increase in the emissions of toxic air contaminants or criteria air pollutants. (3) Maximize additional environmental and economic benefits for California, as appropriate."***

Obviously, the maximization of co-benefits could offer tremendous long-term rewards for California's environment, residents, communities, and economy. That said, the potential environmental consequences and benefits of various possible approaches are not necessarily identical and are not yet known. In order to make an informed choice among options, the public and ARB must have relevant information at their disposal.

In recent public workshops, the ARB has indicated that the maximization of co-benefits would be addressed in the proposed rule, while the Functional Equivalency Document (FED) would separately review the environmental impacts of the proposed cap-and-trade program and various offset components under the requirements of the California Environmental Quality Act (CEQA). ARB's choice of strategies

to implement AB 32's co-benefits requirement, however, will have environmental consequences, especially when considered in conjunction with other elements of the cap-and-trade regulation. These consequences may not be universally beneficial, especially as compared to other feasible alternative approaches. Disclosure and analysis of these consequences, as well as identification of alternatives that could lessen them, is the core purpose of CEQA. It is therefore critical that the FED provide the same level of disclosure and analysis with regard to the maximization of co-benefits as is required for other environmental impacts under CEQA. That is, in order to ensure that the rule as a whole maximizes the co-benefits to California, the ARB should undertake a comparison of the alternatives that would allow a comparison among policy alternatives—cap-and-trade, regulated reductions, carbon fee, etc—and among the design options within the alternatives. The proper place to undertake this comparison is in the FED, not in the proposed rule alone.

As the ARB stated in the July 29 update regarding the proposed offset component of the California cap-and-trade program, the ARB will conduct analyses to ensure that any proposed offsets meet all AB 32 requirements. This will necessarily include a comparison of alternatives among policy options within the offset methodologies to ensure the maximization of co-benefits from the offset credits. Furthermore, as AB 32 requires the maximization of co-benefits for California as a whole, it is critical that the full long-term value of environmental benefits to the state as a whole are appropriately estimated and projected. One of the great challenges with developing the proposed rule, the Initial Statement of Reasons (ISOR), and the environmental review, simultaneously, is ensuring that the review is used to determine the policy decisions in a meaningful and transparent way.

As the purpose of CEQA is to provide decision-makers and the public with meaningful information regarding the environmental impacts of policies before decisions are made, it is critical that the environmental review provide a meaningful analysis and comparison of policy options that explicates the selection of the proposed alternative and enables environmental considerations to influence the program design. Among the environmental impacts to be considered are the increased emissions from capped sectors due to the inclusion of offsets, and the associated risk of leakage and reversals within the offset program.

We appreciate your attention to these important issues. We look forward to working with the ARB as you address these critical reviews and policy decisions.

Sincerely,

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